

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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HESS ENERGY NEW YORK CORPORATION,

Plaintiff,

v.

08-CV-0404

FRIAR TUCK INN OF THE CATSKILLS, INC.,

Defendant.

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THOMAS J. McAVOY  
Senior United States District Judge

**DECISION and ORDER**

Plaintiff moves to dismiss the Complaint against it on the grounds of lack of personal jurisdiction and lack of subject matter jurisdiction.

**I. Service of Process**

The service of process issue is moot because Plaintiff has reserved Defendant through the Secretary of State. Plaintiff shall, however, timely file a certificate of service. Fed. R. Civ. P. 4(l).

**II. Subject Matter Jurisdiction**

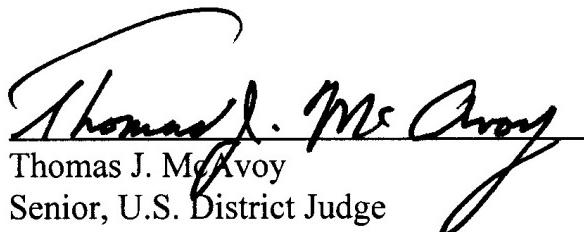
Subject matter jurisdiction in this case is premised upon diversity jurisdiction. 28 U.S.C. § 1332. There is no dispute over the amount in controversy. The question is whether Plaintiff has its principal place of business in New York or elsewhere. "A variety of tests exist to determine a corporation's principal place of business . . . but the determination is relatively straightforward when the corporation generally conducts its business policy and makes management decisions in a single state." Pinnacle Consultants, Ltd. v. Leucadia Nat. Corp.,

101 F.3d 900, 906 (2d Cir. 1996). The facts in this case demonstrate that, although Plaintiff provides electricity services to customers in New York, its principal place of business is in New Jersey. Plaintiff's officers and employees are located in New Jersey, its corporate decisions are made there, company records are kept there, customer service is provided out of New Jersey, and Plaintiff conducts its billing and collection operations out of New Jersey. Defendant has provided no evidentiary support for its contention that Plaintiff's principal place of business is in New York. Accordingly, the Court finds that Plaintiff is a Delaware corporation with a principal place of business in New Jersey. Because there is complete diversity, the Court has subject matter jurisdiction.

For the foregoing reasons, Defendant's motion to dismiss is DENIED.

IT IS SO ORDERED.

Dated:July 21, 2008



Thomas J. McAvoy  
Senior, U.S. District Judge